

88-04

Betsy

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 9

IN THE MATTER OF:

~~Southern Pacific Transportation~~  
~~Company,~~

Respondent.

U.S. EPA Docket No. 88-04

Proceeding Under Sections 104(a),  
106(a) and 122 of the Comprehensive  
Environmental Response, Compensation  
and Liability Act of 1980, 42 U.S.C.  
§§9604(a), 9606(a), and 9622, as  
amended by the Superfund Amendments  
and Reauthorization Act of 1986.

ADMINISTRATIVE ORDER  
ON CONSENT

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1 Any factual findings, legal conclusions, and other determinations  
2 herein are solely those of EPA.

3  
4 II. STATEMENT OF PURPOSE

5 In entering into this Consent Order, the mutual objectives  
6 of EPA and Southern Pacific are:

7 A. To develop a Remedial Investigation ("RI") and  
8 Feasibility Study ("FS") Work Plan based on the RI/FS Work Plan  
9 Outline, a copy of which is attached hereto as Attachment B, and  
10 by this reference made a part of this Consent Order. The RI/FS  
11 Work Plan Outline specifies work to be performed during the  
12 RI/FS, including but not limited to sediment and surface water  
13 sampling, soil core boring and sampling, monitor well placement,  
14 groundwater sampling, pumping, and aquifer tests, and evaluation  
15 of remedial action alternatives as part of the Feasibility Study.

16 B. To conduct the RI/FS described in the Work Plans, for  
17 the following purposes:

18 (1) to determine fully the nature and extent of any  
19 threat to the public health, welfare, or the environment caused  
20 by the release or threatened release of hazardous substances,  
21 pollutants, or contaminants at or from the Southern Pacific  
22 Roseville facility (defined in Paragraph III. A. below); and

23 (2) to evaluate alternatives for the appropriate  
24 remedial action or actions to prevent or mitigate the migration  
25 or the release or threatened release of hazardous substances,  
26 pollutants, or contaminants at or from the Southern Pacific  
27 Roseville facility.

28 C. The activities conducted pursuant to this Consent Order

1 are subject to review and, where appropriate, approval by EPA  
2 and shall be consistent with the National Oil and Hazardous  
3 Substances Pollution Contingency Plan, 40 C.F.R. Part 300, and  
4 any amendments made thereto ("National Contingency Plan" or  
5 "NCP"), and all relevant EPA written guidance and policies.  
6

### 7 III. BACKGROUND

8 A. The Southern Pacific Roseville facility (hereinafter  
9 "the Site") is an active railyard, several hundred acres in  
10 size, located in Roseville, California, within the area bor-  
11 dered by Main Street to the north, Roseville Road to the east,  
12 Atkinson Road to the west, and "U" Street to the south. The  
13 Site occupies an area approximately 1/4 mile wide and 4 miles  
14 long and is bisected by Dry Creek. Dry Creek is a tributary to  
15 the Sacramento River, approximately one-half mile above its  
16 confluence with the American River. A map of the Site is  
17 attached hereto and marked Attachment A, showing the locations  
18 of all Ponds and Areas referred to below.

19 B. In October 1984, EPA proposed the Site for inclusion  
20 on the National Priorities List ("NPL") as defined in Section  
21 105 of CERCLA, 42 U.S.C. § 9605. At present the Site remains  
22 proposed for inclusion on the NPL.

23 C. Respondent's operational activities at the Site have  
24 included the generation, treatment and disposal of liquid and  
25 solid hazardous substances, pollutants, and contaminants at  
26 various locations throughout the Site as a result of cleaning,  
27 maintaining, repairing, and painting freight cars and locomo-  
28 tives. Past operations at the Site have included the use of

1 disposed of on the adjacent soil surface. Some of this material  
2 was taken to a Class I disposal site. Wastewater from the RAMAC  
3 area would flow through the drainage interceptor before discharg-  
4 ing into Pond A.

5 F. A storm water retention basin, adjacent to Pond A,  
6 received wet weather overflows from the RAMAC and Roseville  
7 yards. The storm water retention basin contained a sump and  
8 piping system which formerly allowed the controlled discharge of  
9 storm water to Dry Creek. Presently, if storm water is dis-  
10 charged from the basin, it passes through an overflow Weir/Moni-  
11 toring station before entering Dry Creek. Under normal operating  
12 conditions, storm water from the basin is pumped to the Southern  
13 Pacific wastewater treatment plant and treated prior to discharge  
14 to the Roseville publicly owned treatment works (POTW). Ponds A,  
15 B, C, D, and E, the drainage interceptor, and the storm water  
16 retention basin are collectively referred to as "Area A".

17 G. A grit pile exists from former grit blasting of rail  
18 cars at the RAMAC yard. Adjacent to the grit pile is a former  
19 drainage basin which served as a settling and retention basin for  
20 rinse water from a freight car washdown area. These two sites  
21 are collectively referred to as "Area B". A debris area also  
22 existed in the RAMAC yard which is referred to as "Area H".

23 H. In a preliminary investigation by EPA and Southern  
24 Pacific, and Southern Pacific's environmental consultant, ERM  
25 West, analyses performed on soil samples taken in August 1985  
26 from all of the areas described in Paragraphs E, F, and G above,  
27 indicated concentrations of heavy metals, volatile organic com-  
28 pounds, semivolatile compounds, polynuclear aromatic hydrocarbons

1 (PAHs), and pesticides at locations set forth in the two reports  
2 of the investigation, by Jacobs Engineering (1/86) and ERM West  
3 (12/85). Groundwater samples, taken as part of a quarterly  
4 monitoring program by Southern Pacific from eleven onsite moni-  
5 toring wells, have periodically indicated the presence of vola-  
6 tile organics, metals and PAHs in some of the wells.

7 1. Volatile organic compounds were detected in soil  
8 and groundwater adjacent to the diesel shop located in the Diesel  
9 Locomotive yard. Volatile organic compounds detected in the soil  
10 included 1,1 dichloroethane at 10,000 ppb, ethyl benzene at 1,700  
11 ppb, toluene at 1,100 ppb, and xylenes at 2,000 ppb. Volatile  
12 organic compounds detected in the groundwater included vinyl  
13 chloride at 2,900 ppb, 1,1-dichloroethane at 17,000 ppb, trans-  
14 1,2-dichloromethane at 4,800 ppb, and tetrachloroethane (PCA) at  
15 1,100 ppb. PAH contamination was detected in both the soil and  
16 groundwater at levels as high as 8,000 ppb (phenanthrene) in the  
17 soil and 130 ppb (2-methylnaphthalene) in the groundwater.

18 2. Metals and volatile organic compounds were detected  
19 in the soil of Area A. Arsenic was detected in the soil at a  
20 concentration of 7.5 ppm, copper at 710 ppm, lead at 873 ppm, and  
21 zinc at 531 ppm. Volatile organics were also detected in the  
22 soil. Toluene was detected at 1,400 ppb, ethyl benzene at 2,800  
23 ppb, and xylenes at 11,000 ppb. Fourteen semivolatiles were  
24 detected in the soil, including 2-methylnaphthalene at 1,600,000  
25 ppb. Two pesticides, lindane and aldrin, were detected in the  
26 soil at concentrations of 20 ppb each. Volatile organic com-  
27 pounds were detected in the groundwater near the former ponds;  
28 methylene chloride was detected at 48 ppb and chloroethane was



1 detected at 14 ppb.

2 3. Analytical results from soil samples obtained from  
3 the grit piles ("Area B") indicate heavy metal contamination.  
4 Copper concentrations were reported as high as 320 ppm, lead as  
5 high as 670 ppm, zinc as high as 20,374 ppm, and total chromium  
6 as high as 370 ppm. Analysis of sediment samples from the adja-  
7 cent settling pond indicated concentrations of toluene at 110 ppb  
8 and methylene chloride at 360 ppb. Chromium was detected at  
9 1,200 ppm and arsenic at 11.6 ppm. Fourteen PAHs were detected,  
10 including anthracene at 1100 ppb. Analysis conducted on ground-  
11 water obtained from an adjacent well detected cadmium at a con-  
12 centration of 20 ppb.

13 4. Copper, lead, and zinc were detected in the soil of  
14 Area C at concentrations of 67 ppm, 94 ppm, and 565 mg/l, respec-  
15 tively. Two volatiles and six semi-volatiles were also detected,  
16 including bis(2-ethylhexyl)phthalate at 8,300 ppb.

17 5. Heavy metal soil contamination has been detected in  
18 a rail car cleaning track basin and debris area ("Areas D, E, and  
19 F"). Copper, lead and zinc have been detected at concentrations  
20 of 2,409 ppm, 2,027 ppm, and 5,900 ppm respectively. Four pesti-  
21 cides (chlordane, DDD, DDE, and DDT) were detected in the soil at  
22 levels of 2,900 ppb, 450 ppb, 1,200 ppb, and 650 ppb, respective-  
23 ly. Thirteen PAHs were detected, including di-n-butylphthalate  
24 at 7,500 ppb, benzo(a)anthracene at 4,900 ppb, and benzo(a)pyrene  
25 at 4,500 ppb.

26 I. Three offsite municipal wells, ranging between 1,000  
27 feet and 2,000 feet from the Site, were closed three years ago  
28 because of contamination. In one of the wells tetrachloroethylene

1 (PCE) and trichloroethylene (TCE) have been detected at concen-  
2 trations as high as 180 ppb and 8 ppb respectively. In another  
3 one of the wells PCE and chloroform have been detected at concen-  
4 trations as high as 15.9 ppb and 5.9 ppb, respectively. The  
5 third municipal well was closed to avoid drawing contamination  
6 towards it. At present, the source of contamination of these  
7 municipal wells has not been determined. At least 10 domestic  
8 wells in Roseville (population 28,000) are within 1,500 feet of  
9 the Site. The depth to groundwater from the Site surface ranges  
10 from 10 to 20 feet.

11 J. Most of the volatile organic compounds that have been  
12 detected at the Site are organochlorines. In adequate dosages,  
13 organochlorines will interfere with axonic transmission of nerve  
14 impulses and, therefore, disrupt the function on the nervous  
15 system, principally that of the brain. This results in beha-  
16 vioral changes, sensory and equilibrium disturbances, involuntary  
17 muscle activity, and depression of vital centers, particularly  
18 those controlling respiration. Adequate doses of some organo-  
19 chlorines increase myocardial irritability and stimulate synthesis  
20 of hepatic drug-metabolizing enzymes.

21 K. The heavy metals found on the Site can be toxic and/or  
22 carcinogenic. Ingestion of zinc may cause fever, vomiting,  
23 stomach cramps, and diarrhea. Cadmium may cause prostate cancer,  
24 anemia, and pulmonary disease. Arsenic can be carcinogenic,  
25 teratogenic, fetotoxic, and embryotoxic. High levels of copper  
26 can be toxic. Exposure to lead can result in toxic effects in  
27 the brain and kidneys and can cause permanent damage to the brain  
28 and kidneys.

1 L. Some of the PAHs that have been found at the Site are  
2 carcinogenic, and can cause tumors both at the site of applica-  
3 tion and systemically. Carcinogenic PAHs are generally active in  
4 mutagenic assays. They also cause skin disorders and immuno-  
5 suppression. Adverse effects on the liver and kidney have been  
6 associated with exposure to PAHs.

7 M. Acute oral or skin exposure to the organochlorine pesti-  
8 cides, chlordane, DDT, DDD, and DDE can cause vomiting, seizures,  
9 and death. These compounds especially adversely affect the liver  
10 and central nervous system.

11 N. Potential migration pathways for contaminants which  
12 affect public health include air routes for volatiles or contam-  
13 inated dust, contamination of groundwater used for drinking by  
14 the residents of Roseville, and offsite migration of contaminated  
15 soils and dissolved contaminants via surface runoff.

#### 16 17 IV. CONCLUSIONS OF LAW

18 A. The Southern Pacific Roseville facility is a "facility,"  
19 as defined in Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

20 B. Southern Pacific is a "person," as defined in Section  
21 101(21) of CERCLA, 42 U.S.C. § 9601(21).

22 C. Southern Pacific used, stored, and disposed of materials  
23 at the Site that are "hazardous substances," as defined in Sec-  
24 tion 101(14) of CERCLA, 42 U.S.C. § 9601(14).

25 D. The past, present, and potential migration of hazardous  
26 substances from the Site constitute actual or threatened  
27 "releases" as defined in Section 101(22) of CERCLA, 42 U.S.C.  
28 § 9601(22).

1 E. Southern Pacific is a person subject to liability under  
2 Section 107(a) of CERCLA, 42 U.S.C. § 9607(a).

3  
4 V. DETERMINATIONS

5 Based on the Background and Conclusions of Law set forth  
6 above, EPA has determined that:

7 A. The actual or threatened releases of hazardous substances  
8 from the Site may present an imminent and substantial endanger-  
9 ment to the public health or welfare or the environment.

10 B. The actions required by this Consent Order are necessary  
11 to protect the public health and welfare and the environment.

12 C. Respondent has demonstrated that it is qualified to  
13 conduct the RI/FS.

14  
15 VI. WORK TO BE PERFORMED

16 Based on the foregoing, it is hereby AGREED TO AND ORDERED  
17 that the following work shall be performed:

18 A. Respondent shall ensure that all work performed pursuant  
19 to this Consent Order shall be under the direction and supervi-  
20 sion of a qualified contractor with expertise in investigating,  
21 analyzing, and remediating hazardous waste problems.

22 B. Respondent has notified EPA that its contractor for the  
23 work to be performed pursuant to this Consent Order shall be ERM  
24 West, an environmental and engineering consulting firm. The  
25 Respondent has informed EPA that ERM West has worked at the Site  
26 for the past three years, is familiar with the Site, and is  
27 qualified to perform this work. Respondent shall notify EPA in  
28 writing of the name, address, telephone number, and qualifications

1 of any replacement or additional contractor or subcontractor to  
2 be used in carrying out the terms of this Consent Order. Such  
3 notification shall given prior to the date of the commencement  
4 of any work to be performed under this Consent Order by the  
5 contractor or subcontractor.

6 C. EPA has contracted with a qualified person to assist  
7 EPA in overseeing and reviewing the conduct of the work per-  
8 formed under this Consent Order, in accordance with Section  
9 104(a)(1) of CERCLA. That person is Jacobs Engineering Group,  
10 Inc. EPA shall notify Respondent in writing of the name,  
11 address, telephone number and qualifications of any replacement  
12 contractor. Such notification shall be given prior to the date  
13 of commencement of any work to be performed under this Consent  
14 Order by such replacement Contractor.

15 D. All deliverables and work performed pursuant to this  
16 Consent Order shall be consistent with the EPA Remedial Inves-  
17 tigation and Feasibility Study Guidance documents entitled "EPA  
18 Guidance on Remedial Investigations Under CERCLA" (June 1985)  
19 and "EPA Guidance on Feasibility Studies Under CERCLA" (April  
20 1985), and any amendments made thereto; the requirements of  
21 CERCLA, and any amendments made thereto, including but not  
22 limited to § 121, 42 U.S.C. § 9621; the NCP and all other  
23 applicable regulations; and all other applicable EPA written  
24 guidance and policies.

25 E. In accordance with the schedules outlined in Section  
26 VII of this Consent Order, the Respondent shall submit to EPA  
27 plans to conduct the Remedial Investigation and the Feasibility  
28 ///

1 Study (RI and FS Work Plans). The RI and FS Work Plans must  
2 include, at a minimum, all elements addressed in the Work Plan  
3 Outline attached to this Consent Order and the EPA guidance  
4 documents referenced above. The RI and FS Work Plans shall be  
5 subject to review by EPA, shall incorporate any modifications  
6 and additions required by EPA beyond the elements addressed in  
7 the Work Plan Outline, and shall be subject to approval by EPA.

8         1. The RI Work Plan shall include, but not be limited  
9 to, preparation, submission, and, as appropriate, implementa-  
10 tion of: sampling plans; site health and safety plan; quality  
11 assurance project plan; data management plan; progress reports;  
12 field data submissions; public health and risk assessment;  
13 analytical data submissions; and draft and final RI reports.

14         2. The FS Work Plan shall address, but not be limited  
15 to, elements (a) through (f) below.

16                 a) identification of any environmental problems  
17 requiring immediate removal action or expedited response  
18 actions and plans to implement such actions;

19                 b) identification of any operable units, and  
20 plans to address these operable units through individual FS  
21 work plans;

22                 c) identification of applicable or relevant and  
23 appropriate Federal or promulgated State standards, require-  
24 ments, criteria, or limitations as set forth in Section 121 of  
25 CERCLA;

26                 d) a plan for evaluating remedial technologies,  
27 including identification of general response actions and tech-  
28 nologies, pre-screening of technologies, establishment of

1 response objectives, development of remedial alternatives,  
2 initial screening of alternatives, and detailed evaluation of  
3 alternatives;

4 e) a detailed list of deliverables to be submit-  
5 ted to EPA, including but not limited to the Draft and Final FS  
6 Reports;

7 f) a detailed schedule for submittal of each  
8 deliverable on the list specified in subparagraph (e).

9 F. Required deliverables to be submitted pursuant to this  
10 Consent Order shall include, but are not necessarily limited  
11 to, the documents listed below. As indicated, EPA shall either  
12 "review and comment" or "review and approve" each such  
13 deliverable. Open discussions between Respondent and EPA will  
14 be necessary to assure that deliverables contain sufficient  
15 detail.

16 1. Remedial Investigation (RI) Work Plan

17 --First Draft: EPA review and comment

18 --Second Draft: EPA review and comment

19 --Final: EPA review and approve

20 2. Feasibility Study (FS) Work Plan

21 --First Draft: EPA review and comment

22 --Second Draft: EPA review and comment

23 --Final: EPA review and approve

24 3. Quality Assurance Project Plan

25 --Draft: EPA review and comment

26 --Final: EPA review and approve

27 4. Data Management Plan

28 --Draft: EPA review and comment

- 1           --Final: EPA review and approve
- 2       5. Sampling Plans
- 3           --Draft: EPA review and comment
- 4           --Final: EPA review and approve
- 5       6. Site Health and Safety Plan
- 6           --EPA review and comment
- 7       7. Field Data Submissions
- 8           --EPA review and comment
- 9       8. Analytical Data and Quality Assurance/Quality  
10       Control (QA/QC) Data Submissions
- 11           --EPA review and comment
- 12       9. Endangerment Assessment
- 13           --Draft: EPA review and comment
- 14           --Final: EPA review and approve
- 15       10. RI Report
- 16           --First Draft: EPA review and comment
- 17           --Second Draft: EPA review and comment
- 18           --Final: EPA review and approve
- 19       11. FS Deliverables
- 20           --Draft: EPA review and comment
- 21           --Final: EPA review and approve
- 22       12. FS Report
- 23           --First Draft: EPA review and comment
- 24           --Second Draft: EPA review and comment
- 25           --Final: EPA review and approve
- 26       13. Monthly Progress Reports
- 27           --EPA review and comment
- 28           a. The specific items which must be addressed in



1 each Progress Report shall be listed in the RI and FS Work  
2 Plans. Generally, these Progress Reports shall describe the  
3 actions that have been taken toward achieving compliance with  
4 this Consent Order, including a general description of activi-  
5 ties commenced or completed during the reporting period, acti-  
6 vities projected to be commenced or completed during the next  
7 reporting period, and any problems encountered or anticipated  
8 by the Respondent in performance of work pursuant to this  
9 Consent Order.

10 b. If EPA determines that a Progress Report is  
11 incomplete, then EPA shall so notify the Respondent, and Respon-  
12 dent shall submit the corrections along with the next monthly  
13 Progress Report.

14 G. Submittal Schedule for Deliverables

15 Respondent shall submit all required deliverables in accor-  
16 dance with the schedule and time frames set forth in Section  
17 VII (Activity/Submittal Schedule), and any additional schedules  
18 subsequently incorporated into this Consent Order.

19 H. EPA Review and Approval of Deliverables

20 1. For each deliverable subject to EPA review and  
21 comment pursuant to this Section, EPA will review the deliver-  
22 able and submit written comments to Respondent. Where appro-  
23 priate, EPA's written comments shall expressly identify all  
24 elements required to be addressed in the deliverable which EPA  
25 believes have not been addressed, and shall discuss how to  
26 remedy any such omissions. In accordance with the schedule set  
27 forth in Section VII, Respondent shall submit to EPA a revised  
28 deliverable which addresses all of EPA's comments.

1           2. For each final deliverable subject to EPA review  
2 and approval pursuant to this Section, EPA shall provide  
3 Respondent with a written determination of approval or dis-  
4 approval of the deliverable.

5           a. If EPA does not approve the final deliverable,  
6 EPA shall submit to Respondent a written determination of  
7 disapproval and comments. The determination shall expressly  
8 identify all elements required to be addressed which EPA  
9 alleges have not been addressed, and the comments shall discuss  
10 the omissions and how to remedy them. Within fifteen (15) days  
11 of receipt of EPA's comments on the disapproved final deliver-  
12 able, the Respondent shall submit to EPA a revised final deliv-  
13 erable which addresses all of EPA's comments. This procedure  
14 and time frame shall apply to any subsequent disapproval and  
15 comments issued by EPA on any subsequent revision of a final  
16 deliverable.

17           b. If EPA determines that Respondent's revised  
18 final deliverable is unacceptable for any reason, EPA reserves  
19 the right to reject that revision and to rewrite those portions  
20 of the deliverable found to be unacceptable.

21           c. Upon receipt of EPA's written approval of the  
22 final deliverable, the Respondent shall begin to conduct any  
23 RI/FS tasks outlined in the deliverable.

24           I. All submittals required pursuant to this Consent  
25 Order, including but not limited to the deliverables listed in  
26 paragraph F above, shall, upon approval by EPA, be incorporated  
27 into and become a part of this Consent Order, in accordance  
28 with paragraph C of Section XXIII herein.

1 J. Documents, including reports, sample results, appro-  
2 vals, disapprovals, and other correspondence to be submitted  
3 pursuant to this Consent Order, shall be sent to the following  
4 addresses or to such other addresses as the Respondent or EPA  
5 hereafter may designate in writing. Documents shall be deemed  
6 submitted on the date received by EPA or Respondent.

7 1. Documents to be submitted to EPA and other inter-  
8 ested agencies under the terms of this Consent Order shall be  
9 distributed as follows.

10 (a) Four copies shall be sent to:

11 Julia Bussey  
12 Enforcement Programs Section  
13 US EPA, Region 9, T-4-4  
215 Fremont Street  
San Francisco, CA 94105

14 (b) One copy each shall be sent to:

15 Jim Austreng  
16 Toxic Substances Control Division  
California Department of Health Services  
4250 Power Inn Rd.  
17 Sacramento, CA 95826

18 Alexander McDonald  
19 California Regional Water Quality Control  
Board  
20 Central Valley Region  
3443 Routier Rd.  
21 Sacramento, CA 95827

22 2. Two copies of all documents to be distributed to  
23 Southern Pacific shall be sent to:

24 Mark E. Ransom, P.E.  
25 Assistant Manager,  
Environmental Engineering  
26 Southern Pacific Transportation Company  
One Market Plaza  
10th Floor, Room 1007  
27 San Francisco, CA 94105

28 EPA and Southern Pacific may subsequently change the addressees

1 in this paragraph. Such change shall be accomplished by notify-  
2 ing the other party in writing.

3 K. EPA may determine that the RI/FS requires tasks in  
4 addition to, or in modification of, those tasks set forth in  
5 this Consent Order. Subject to the provisions of Section XIII  
6 of this Consent Order (Dispute Resolution), Southern Pacific  
7 shall implement any additional or modified tasks that EPA  
8 determines to be needed as part of the RI/FS. The additional  
9 or modified work shall be completed in accordance with the  
10 standards, specifications, and schedule approved by EPA. The  
11 appropriate Sections and Appendices of this Consent Order shall  
12 be amended to include any additional tasks that are to be  
13 performed. Under any circumstances, EPA reserves the right to  
14 conduct additional or modified tasks as part of the RI/FS.

15  
16 VII. ACTIVITY/SUBMITTAL SCHEDULE

17 Following is a schedule of activities and submittals  
18 required by this Consent Order. The number of days allowed for  
19 each activity and submittal shall be calendar days. The  
20 documents listed herein shall be submitted pursuant to Section  
21 VI.J of this Consent Order.

22	<u>ACTIVITY/SUBMITTAL</u>	<u>SCHEDULE</u>
23	1. Submit Monthly Progress	10 days from last day of each
24	Reports	month throughout the effective
		period of Consent Order
25	2. Submit RI Work Plan	60 days from effective date of
26	(First Draft)	Consent Order
27	3. Submit RI Work Plan	30 days from Respondent's
28	(Second Draft)	receipt of EPA's comments
		or First Draft RI Work Plan

1	ACTIVITY/SUBMITTAL	SCHEDULE
2	4. Submit RI Work Plan	30 days from Respondent's
3	(Final)	receipt of EPA's comments on
		Second Draft RI Work Plan
4	5. Submit Quality Assurance	30 days from Respondent's
5	Project Plan (First Draft),	receipt of EPA's comments on
6	Health and Safety Plan	First Draft RI Work Plan
7	(First Draft), Data Manage-	(submit with Second Draft of
	ment Plan (First Draft),	RI Work Plan)
	and Sampling Plan (First	
	Draft)	
8	6. Submit Quality Assurance	30 days from Respondent's
9	Project Plan (Final),	receipt of EPA's comments on
10	Health and Safety Plan	First Drafts of QAPP, H&S Plan,
11	(Final), Data Manage-	DMP, and SP (submit with Final
	ment Plan (Final), and	RI Work Plan)
	Sampling Plan (Final)	
12	7. Initiate Work outlined	15 days from Respondent's
13	in Sampling Plan	receipt of written EPA
		approval of QAPP, Data Manage-
		ment Plan, and Sampling Plan
14	8. Implement RI Work Plan	15 days from Respondent's
15		receipt of written EPA
		approval of RI Work Plan
16	9. Submit Feasibility Study	90 days from effective date of
17	(FS) Work Plan (First	Consent Order
	Draft)	
18	10. Submit FS Work Plan	30 days from Respondent's
19	(Second Draft)	receipt of EPA's comments on
		First Draft FS Work Plan
20	11. Submit FS Work Plan	30 days from Respondent's
21	(Final)	receipt of EPA's comments on
		Second Draft FS Work Plan
22	12. Implement FS Work Plan	15 days from Respondent's
23		receipt of written EPA
		approval of FS Work Plan
24	13. Submit Field Data from	30 days from completion of each
25	each sampling event	sampling event undertaken as
		part of the RI/FS
26	14. Submit analytical data	60 days from completion of each
27	and quality assurance/	sampling event undertaken as
28	quality control (QA/QC)	part of the RI/FS
	data from each sampling	
	event	

1	<u>ACTIVITY/SUBMITTAL</u>	<u>SCHEDULE</u>
2	15. Submit RI Report	60 days from Respondent's receipt
3	(First Draft)	of written EPA notice that RI
4		field work is complete. (RI
5		field work shall be considered
6		complete no earlier than date
7		of submission of analytical and
8		QA/QC data from the last sampling
9		event undertaken as part of
10		the RI.)
11	16. Submit RI Report	45 days from Respondent's receipt
12	(Second Draft)	of EPA's comments on First Draft
13		RI Report
14	17. Submit RI Report	30 days from Respondent's receipt
15	(Final)	of EPA's comments on Second
16		Draft RI Report
17	18. Submit FS Deliverables	As outlined in FS Work Plan
18	19. Submit FS Report	As outlined in FS Work Plan
19	(First Draft)	
20	20. Submit FS Report	As outlined in FS Work Plan
21	(Second Draft)	
22	21. Submit FS Report	As outlined in FS Work Plan
23	(Final)	

#### VIII. DESIGNATED PROJECT COORDINATORS

A. On or before the effective date of this Consent Order, EPA and the Respondent shall each designate a Project Coordinator. Each Project Coordinator shall be responsible for overseeing the implementation of this Consent Order. The EPA Project Coordinator will be EPA's designated representative at the Site. To the maximum extent possible, communications between the Respondent and EPA and all documents, including reports, approvals, and other correspondence concerning the activities performed pursuant to the terms and conditions of this Consent Order, shall be directed through the Project Coordinators.

1 B. EPA and the Respondent each have the right to change  
2 their respective Project Coordinator. Such a change shall be  
3 accomplished by notifying the other party in writing at least  
4 one week prior to the change.

5 C. The EPA-designated On-Scene Coordinator, who may also  
6 be designated as the EPA Project Coordinator, shall have the  
7 authority vested in the On-Scene Coordinator by the National  
8 Contingency Plan. This includes the authority to halt, conduct,  
9 or direct any tasks required by this Consent Order or any  
10 response actions or portions thereof when conditions present an  
11 immediate risk to public health or welfare or the environment.

12 D. The absence of the EPA Project Coordinator or On-Scene  
13 Coordinator from the Site shall not be cause for the stoppage  
14 of work.

15  
16 IX. QUALITY ASSURANCE

17 A. The Respondent shall use quality assurance, quality  
18 control, and chain of custody procedures in accordance with all  
19 relevant EPA and Region IX guidance, including the document  
20 entitled "Interim Guidelines and Specifications for Preparing  
21 Quality Assurance Project Plans, QAMS-005/80." These procedures  
22 shall be followed throughout all sample collection and analysis  
23 activities. The Respondent shall consult with EPA in planning  
24 for, and prior to, all sampling and analysis required under the  
25 RI/FS Work Plan. In order to provide quality assurance and  
26 pursuant to this Consent Order, the Respondent shall:

27 1. Ensure that EPA personnel and EPA authorized  
28 representatives are allowed access to the laboratories and

1 personnel utilized by the Respondent for analyses.

2           2. Ensure that the laboratories utilized by the  
3 Respondent for analyses perform such analyses according to EPA  
4 method or methods deemed satisfactory to EPA and submit all  
5 protocols to be used for analyses to EPA at least 14 calendar  
6 days prior to the commencement of analysis.

7           3. Ensure that laboratories used by the Respondent for  
8 analyses participate in an EPA quality assurance/quality control  
9 (QA/QC) program equivalent to that which is followed by EPA and  
10 which is consistent with EPA document QAMS-005/80 and other  
11 relevant EPA and Region IX guidance provided by EPA to Respon-  
12 dent. As part of such a program, and upon request by EPA, such  
13 laboratories shall perform analyses of samples provided by EPA,  
14 to demonstrate the quality of each laboratory's analytical  
15 data. The number of such samples shall be consistent with  
16 Region IX internal procedures. Samples for each different  
17 media area may be submitted to the Respondent's laboratory for  
18 analysis as a QA/QC audit.

19

20                           X. SITE ACCESS

21           A. The United States and the State of California, their  
22 agencies and departments, and their authorized representatives,  
23 including contractors and consultants, may enter and inspect the  
24 Site as often as may reasonably be required.

25           B. No conveyance by Respondent of title, easement, or  
26 other interest in the property comprising the Site shall be  
27 consummated without a provision permitting the continuous  
28 implementation of the provisions of this Consent Order.



1 C. All persons with access to the Site shall comply with  
2 Respondent's Site Health and Safety Plan.

3 D. To the extent that access to lands owned by parties  
4 other than those bound by this Consent Order is necessary to  
5 carry out the work required under this Order, the Respondent  
6 shall use its best efforts to obtain all necessary access  
7 agreements from the owners or lessees of such lands. In the  
8 event that Respondent is unable to obtain the necessary access  
9 agreements, EPA will use its best efforts to assist Respondent  
10 in obtaining the necessary access. Any such access agreements  
11 shall provide for reasonable access to EPA and its authorized  
12 representatives. In the event that any necessary access agree-  
13 ments are not obtained within fourteen days in advance of the  
14 need for such access, the Respondent shall notify EPA regarding  
15 both the lack of, and efforts to obtain, such agreements.

16

17 XI. SAMPLING, ACCESS, AND DATA/DOCUMENT AVAILABILITY

18 A. The Respondent shall make available to EPA the results  
19 of all sampling, tests, and other data generated by the Respon-  
20 dent, or on the Respondent's behalf, with respect to any work  
21 done at the Site, and in accordance with the submittal schedules  
22 set forth in Section VII of this Consent Order. EPA will make  
23 available to the Respondent the results of any sampling, tests,  
24 and other data similarly generated by EPA.

25 B. Under the provisions of § 104(e) of CERCLA, as amended,  
26 EPA explicitly reserves the right to observe, at any time, the  
27 work being performed by the Respondent or its authorized repre-  
28 sentatives, including contractors and subcontractors, pursuant

1 to the implementation of this Consent Order. In addition, at  
2 the request of EPA, the Respondent shall allow EPA or its  
3 authorized representatives to take split or duplicate samples  
4 of any samples collected by the Respondent pursuant to the  
5 implementation of this Consent Order. Within fifteen (15) days  
6 after EPA's approval of any sampling plan, Respondent shall  
7 notify EPA of the intended date of commencement of the sampling  
8 activity. In addition, Respondent shall notify EPA at least 48  
9 hours prior to the commencement of any sample collection  
10 activity.

11 C. EPA and Respondent agree to exchange technical data  
12 and information relating to the environmental problems, public  
13 health threats, Site conditions, Site use and history, contami-  
14 nant incidence and migration, and regional environmental condi-  
15 tions relating to the Site, as such data and information becomes  
16 available.

17 D. Respondent shall permit the United States and  
18 the State of California, their agencies and departments, and  
19 their authorized representatives to have access at reasonable  
20 times to the Site to monitor any activity conducted pursuant to  
21 this Consent Order, or to inspect and obtain samples as EPA  
22 deems necessary, and EPA shall permit Respondent to observe  
23 such EPA monitoring, tests, or investigations. EPA shall  
24 complete any such monitoring, tests, or investigations with  
25 reasonable promptness. EPA representatives shall comply with  
26 the Site Health and Safety Plan and all other security and health  
27 and safety requirements normally in effect at the facility.

28 E. Except as provided below, Respondent may assert a

1 confidentiality claim covering part or all of the information  
2 requested by this Consent Order pursuant to 40 C.F.R. § 2.203(b).  
3 Information determined to be confidential by EPA will be afforded  
4 the protection specified in 40 C.F.R. Part 2, Subpart B. If no  
5 such claim accompanies the information when it is submitted to  
6 EPA, it may be made available to the public by EPA without fur-  
7 ther notice to Respondent. Respondent waives its right to assert  
8 a confidentiality claim or a claim of privilege as attorney work  
9 product or attorney/client communications with respect to any  
10 sampling and/or test or other technical data generated by Respon-  
11 dent or on Respondent's behalf that in any way concerns soil,  
12 groundwater, surface water, or air contamination at the Site.

13 F. Upon request by Respondent, EPA shall, consistent with  
14 the principles of the Freedom of Information Act, furnish Respon-  
15 dent with copies of all records, documents, and other writings,  
16 including all sampling and monitoring data and any results of any  
17 tests or investigations conducted by EPA in any way pertaining to  
18 the Site.

19 G. EPA and Respondent shall notify each other in a timely  
20 manner of any project which is likely to produce data or infor-  
21 mation of the types described in this Section.

22

23

#### XII. RECORD PRESERVATION

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EPA and the Respondent agree that each shall preserve,  
during the pendency of this Consent Order and for a minimum of  
six (6) years after its termination, all records and documents  
in their possession or in the possession of their divisions,  
employees, agents, accountants, contractors, or attorneys which

1 relate to the Site, notwithstanding any document retention  
2 policy to the contrary. After the expiration of this six year  
3 period, the Respondent shall notify EPA at least (60) calendar  
4 days prior to the destruction of any such records or documents.  
5 Upon request by EPA, the Respondent shall make available to EPA  
6 such records or documents, or copies of any such records or  
7 documents. Additionally, if EPA requests that some or all  
8 records or documents be preserved for a longer period of time,  
9 the Respondent shall comply with that request.

#### 11 XIII. DISPUTE RESOLUTION

12 A. If the Respondent wishes to raise a good faith  
13 objection to any EPA disapproval, determination, or other  
14 decision made pursuant to this Consent Order, the Respondent  
15 shall orally notify EPA promptly of its objections and attempt  
16 to informally resolve the dispute. If the dispute is not  
17 resolved informally, the Respondent shall subsequently notify  
18 EPA in writing within fourteen (14) days of receipt of the  
19 notice of the decision. EPA and the Respondent shall then have  
20 fourteen (14) days from the date of receipt by EPA of the  
21 notification of Respondent's objection to reach agreement. If  
22 agreement cannot be reached on the disputed issue within this  
23 fourteen (14) day period, EPA shall provide a written statement  
24 of its decision to the Respondent, and the Respondent shall  
25 implement the directives contained in such decision.

26 B. The imposition or amount of stipulated penalties is  
27 not subject to dispute resolution.

28 C. The dispute resolution provision or EPA's decisions

1 pursuant to this provision do not grant or imply jurisdiction  
2 to any court to review EPA's decisions made pursuant to this  
3 Consent Order.

4 D. Use of the dispute resolution provision will not  
5 relieve Respondent's duty to complete the tasks required pur-  
6 suant to this Consent Order in a timely manner in accordance  
7 with the schedule.

8  
9 XIV. STIPULATED PENALTIES

10 A. Except with respect to any extensions allowed by EPA  
11 in writing and any events of force majeure, the parties agree  
12 that for each day that the Respondent fails to comply with the  
13 requirements of this Consent Order, the Respondent shall pay  
14 the sums set forth in paragraph B. below as stipulated penal-  
15 ties.

16 B. Stipulated penalties shall be calculated according to  
17 the following schedule:

18 1. Class I:

19 a. \$7,500 per day for the first ten calendar  
20 days of violation;

21 b. \$10,000 per day for the eleventh through the  
22 twentieth day of violation; and

23 c. \$15,000 per day for the twenty-first and sub-  
24 sequent calendar days of violation.

25 2. Class II:

26 a. \$2,500 per day for the first ten calendar  
27 days of violation; and

28 b. \$5,000 per day for the eleventh and subsequent

1 calendar days of violation.

2 3. Class III:

3 a. \$500 per day for the first ten calendar days  
4 of violation; and

5 b. \$1,000 per day for the eleventh and subsequent  
6 calendar days of violation.

7 C. For the purposes of this Consent Order, Class I  
8 violations shall include the following:

9 1. Failure to timely submit the following documents,  
10 in accordance with the schedules set forth in Section VII  
11 (Activity/Submittal Schedule):

- 12 a. Final RI Work Plan  
13 b. Final RI Report  
14 c. Final FS Work Plan  
15 d. Final FS Report

16 2. Receipt by Respondent of a written determination  
17 of disapproval of the following:

- 18 a. Final RI Work Plan  
19 b. Final RI Report  
20 c. Final FS Work Plan  
21 d. Final FS Report

22 D. For the purposes of this Consent Order, Class II  
23 violations shall include the following:

24 1. Failure to timely submit the following documents,  
25 in accordance with the schedules set forth in Section VII  
26 (Activity/Submittal Schedule):

- 27 a. First and second drafts of the RI Work Plan  
28 b. Draft and final Quality Assurance Project Plan  
c. Draft and final Data Management Plan  
d. Draft and final Sampling Plans  
e. Draft and final Health and Safety Plan  
f. First and second drafts of the RI Report  
g. First and second drafts of the FS Work Plan  
h. FS Deliverables  
i. First and second drafts of the FS Report

1           2. Receipt by Respondent of a written determination of  
2 disapproval of the following:

- 3           a. Final Quality Assurance Project Plan  
4           b. Final Data Management Plan  
5           c. Final Sampling Plans

6           3. Failure to perform work required under any of the  
7 Final Plans listed in paragraphs C and D above.

8           4. Failure to perform additional or modified work  
9 required by EPA pursuant to Section VI.K.

10           5. Performance of unauthorized remedial work pursuant  
11 to paragraph H of this Section.

12           6. Failure to otherwise comply with the requirements  
13 of this Consent Order.

14           E. For the purposes of this Consent Order, Class III  
15 violations shall include the following:

16           1. Failure to timely submit progress reports or  
17 corrections to progress reports, in accordance with Section  
18 VI.F(13).

19           2. Failure to timely submit data, in accordance  
20 with Section VI.F(7) and (8).

21           F. Stipulated penalties shall begin to accrue commencing  
22 upon any of the following: 1) Respondent's receipt of a written  
23 determination of disapproval, as specified in Section VI.H(2);  
24 2) initiation of unauthorized remedial work pursuant to  
25 paragraph H of this Section; 3) the failure of Respondent to  
26 meet the schedules set forth in this Consent Order, including  
27 but not limited to Section VII (Activity/Submittal Schedule);  
28 4) upon written notice from EPA to Respondent that a violation  
of this Consent Order has occurred, and describing the nature

1 of such violation.

2 G. Stipulated penalties shall cease to accrue as of the  
3 date that Respondent responds to the event that gave rise to  
4 accrual of stipulated penalties, in compliance with this Con-  
5 sent Order. For the purposes of this paragraph, the following  
6 four categories shall consecutively correspond with the four  
7 accrual categories listed in paragraph F above: 1) the date  
8 that Respondent submits to EPA a revised final deliverable, in  
9 response to EPA's written notice of disapproval; 2) the date  
10 that Respondent ceases to conduct unauthorized remedial work;  
11 3) when Respondent has failed to meet the schedules set forth  
12 in this Consent Order, the date that Respondent submits the  
13 overdue deliverable to EPA; 4) the date that Respondent ceases,  
14 or otherwise cures, the violation of this Consent Order which  
15 triggered stipulated penalties.

16 H. Except as allowed in paragraph I below, Respondent  
17 agrees not to undertake any remedial work in areas of the Site  
18 identified in the Work Plan Outline, and other areas of the  
19 Site subsequently identified for remedial investigation, with-  
20 out the prior approval of EPA. Any such unapproved or unautho-  
21 rized remedial work shall be considered a failure to achieve  
22 the requirements of this Consent Order and shall subject the  
23 Respondent to stipulated penalties under this Section.  
24 Penalties shall accrue for each day that unauthorized remedial  
25 work is conducted.

26 I. Respondent shall not be required to obtain prior EPA  
27 approval, but agrees to provide prior notice to EPA, for work  
28 conducted at the Site by the Respondent as part of the



1 Respondent's regular operational activities. Such work shall  
2 include, but not be limited to, work in response to train  
3 derailments and other catastrophic events. Respondent agrees  
4 to conduct all such work in compliance with federal and State  
5 statutes and regulations.

6 J. Penalties shall accrue during the entire period of any  
7 dispute under the provisions of Section XIII (Dispute Resolu-  
8 tion) but payment will not be demanded during this period.  
9 However, if Respondent does not prevail, EPA shall have the  
10 right to collect all penalties which accrued prior to and  
11 during the period of dispute.

12 K. Neither the invocation of the Dispute Resolution  
13 measures nor the payment of the penalties shall alter Respon-  
14 dent's obligations to complete performance under this Consent  
15 Order. The stipulated penalties set forth in this Section do  
16 not preclude EPA from pursuing any other remedies or sanctions  
17 which may be available to EPA by reason of the Respondent's  
18 failure to comply with any of the requirements of this Consent  
19 Order. Such remedies and sanctions may include, but are not  
20 limited to, a suit for statutory penalties as authorized by  
21 Sections 104, 106, and 109 of CERCLA, 42 U.S.C. §§ 9604, 9606,  
22 and 9609; a federally-funded response action; and a suit for  
23 reimbursement of costs incurred by the United States and the  
24 State of California. However, if Southern Pacific pays the  
25 demanded stipulated penalties for any particular instance of  
26 noncompliance with this Consent Order, Southern Pacific shall  
27 only be required to pay monetary penalties awarded, if any, in  
28 excess of the amounts already paid for that particular instance

1 of noncompliance.

2 L. Stipulated penalties shall be paid within 60 days of  
3 demand by EPA. EPA may, at its sole discretion, reduce or  
4 forgive any penalties that have accrued pursuant to this Sec-  
5 tion. Checks shall be made payable to the Hazardous Substance  
6 Superfund, shall specifically reference the Southern Pacific  
7 Roseville Site, and shall be addressed to:

8 U.S. Environmental Protection Agency  
9 Superfund Accounting  
P.O. Box 371003M  
10 Pittsburgh, PA 15251.

11 Respondent shall send copies of the transmittal letter and check  
12 to the EPA Project Coordinator.

13 M. Stipulated penalties must be paid within 60 days of  
14 the date of Respondent's receipt of demand for payment by EPA  
15 to avoid additional charges. If stipulated penalties are not  
16 paid within 60 days, interest will accrue from the date of  
17 Respondent's receipt of the demand for payment from EPA, at the  
18 current interest rate published by the U.S. Treasury. A 6%  
19 per annum penalty will be applied on any principal amount not  
20 paid within 90 days of the due date.

21

22

#### XV. FORCE MAJEURE

23 A. If any event occurs which causes delay in the  
24 achievement of the requirements of this Consent Order, the  
25 Respondent shall have the burden of proving to EPA by clear and  
26 convincing evidence that the delay: 1) was caused by circum-  
27 stances beyond the control of the Respondent; and 2) could not  
28 have been overcome by due diligence. Such event shall be a

1 force majeure. A delay encountered solely due to conflicting  
2 requirements of government agencies shall be considered to be a  
3 force majeure event, but only if Respondent has notified all  
4 agencies involved and has used its best efforts to resolve such  
5 conflicting requirements. When Respondent becomes aware that  
6 such an event either has occurred or is anticipated, the Respon-  
7 dent shall promptly notify EPA's Project Coordinator orally.  
8 Such notification shall be given within forty-eight (48) hours  
9 of the time Respondent becomes aware of such event, unless such  
10 event occurs on a weekend or Federal holiday, in which case the  
11 notification shall be given on the next Federal business day.  
12 Within fourteen (14) calendar days of the time that Respondent  
13 becomes aware that a force majeure event has occurred or is  
14 anticipated, Respondent shall notify EPA in writing of the  
15 following: the anticipated length and cause of the delay; the  
16 tasks which are directly affected by the delay; the measures  
17 taken or to be taken to prevent or minimize the delay; and the  
18 timetable by which the Respondent intends to implement these  
19 measures. Failure of the Respondent to comply with the notice  
20 requirements of this paragraph shall constitute a waiver of any  
21 claim of force majeure and a waiver of Respondent's right under  
22 this Section to obtain an extension of the time for performance.

23 B. If EPA determines that the delay or anticipated delay  
24 has been or will be caused by circumstances beyond the control  
25 of the Respondent, and could not have been overcome by due  
26 diligence, the time for performance hereunder shall be extended,  
27 at maximum, for a period equal to the delay resulting from such  
28 circumstances. No deadline shall be extended beyond that

1 period of time which is necessary to complete the activities  
2 with the least amount of delay possible. The time for perfor-  
3 mance of any subsequent activity that EPA determines to be  
4 dependent on the delayed activity shall be similarly extended,  
5 unless the dependent activity can be implemented in a shorter  
6 time.

7 C. If EPA determines that the delay either 1) was or is  
8 not beyond the control of the Respondent, or 2) could have been  
9 overcome by due diligence, this delay shall constitute noncom-  
10 pliance with the Consent Order, and penalties shall accrue as  
11 of the initial date of the delay.

12 D. The Respondent shall adopt all reasonable measures to  
13 avoid or minimize delay. Increased costs of performance of the  
14 terms of this Consent Order or changed economic circumstances  
15 shall not be considered circumstances beyond the control of the  
16 Respondent.

#### 17 18 XVI. RESERVATION OF RIGHTS

19 A. Notwithstanding compliance with the terms of this  
20 Consent Order, including the completion of an EPA-approved  
21 Remedial Investigation and Feasibility Study, Respondent is not  
22 released from liability, if any, for any actions taken by EPA  
23 respecting the Site. EPA reserves the right to take any  
24 enforcement action pursuant to CERCLA as amended and/or any other  
25 legal authority, including the right to seek injunctive relief,  
26 monetary penalties, and punitive damages for any violation of law  
27 or this Consent Order.

28 B. Nothing in this Consent Order or any document

1 attached hereto shall constitute an admission by Respondent of  
2 any fact or legal matter or determination set forth herein. By  
3 signing this Consent Order, Respondent does not admit, accept or  
4 acknowledge and specifically denies any liability or fault with  
5 respect to: (1) the conditions at or arising from the Site, (2)  
6 any matter arising out of or relating, directly or indirectly, to  
7 the conditions at or arising from the Site, or (3) any response  
8 costs which have been or may have been incurred by any person.  
9 Any payments made pursuant to Section XVII (Reimbursement of  
10 Response and Oversight Costs) shall not constitute evidence of an  
11 admission by Respondent of any liability to EPA or to any other  
12 person or agency for reimbursement of any cost associated with  
13 the Site or with any issues or matters related to the Site.

14 C. Except as provided in paragraph D of this Section,  
15 Respondent waives any right it may have to seek reimbursement,  
16 pursuant to Section 106(b)(2) of CERCLA, as amended, 42 U.S.C.  
17 § 9606(b)(2), for work conducted pursuant to this Consent Order.

18 D. Respondent reserves and does not waive, any right it  
19 may have to seek reimbursement for: (1) additional or modified  
20 tasks conducted pursuant to Section VI.E and VI.K of this Consent  
21 Order; and (2) costs paid pursuant to Sections XVII (Reimburse-  
22 ment of Response and Oversight Costs) and XVIII (Reimbursement of  
23 Past Costs) of this Consent Order. Any such right shall be  
24 limited to that provided under Section 106(b)(2)(D) and (E) of  
25 CERCLA. Further, Respondent agrees not to exercise any such  
26 right prior to the termination of this Consent Order under Sec-  
27 tion XXVI. In the event that Respondent exercises any such  
28 right pursuant to this paragraph, and Respondent prevails in

1 such action, Respondent shall have the right to seek recovery of  
2 any stipulated penalty paid pursuant to Section XIV (Stipulated  
3 Penalties) with respect to the specific issue contested by  
4 Respondent in such action.

5 E. Respondent specifically waives any right it might have  
6 to contest EPA jurisdiction to issue, enter into, or enforce  
7 this Consent Order. Respondent also specifically waives (1)  
8 any right it might have to initiate a challenge to the amount  
9 or imposition of the Stipulated Penalties set out in Section  
10 XIV, and (2) any right it might have to initiate a judicial or  
11 administrative action prior to the termination of this Consent  
12 Order for review of an EPA determination made pursuant to Section  
13 XIII (Dispute Resolution).

14 F. Except as otherwise specified in this Consent Order, and  
15 subject to Section 113(h) of CERCLA, 42 U.S.C. § 9613(h), Respon-  
16 dent reserves and does not waive, any rights, claims or defenses,  
17 including without limitation any rights or claims against EPA,  
18 any other governmental agency, or any third party, relating in  
19 any way to the Site, or any defenses that Respondent may in the  
20 future raise to this order, that Respondent might raise to any  
21 action of or determination by EPA pursuant to this Order, or that  
22 Respondent might raise in any other proceeding brought by EPA or  
23 any other governmental agency or person.

24 G. Except as otherwise specified in this Consent Order, EPA  
25 expressly reserves all rights and defenses that it may have,  
26 including EPA's right both to disapprove of work performed by the  
27 Respondent and to require, as provided in Paragraph VI.K. of this  
28 Consent Order, that the Respondent perform tasks in addition to

1 those required under this Consent Order and detailed in the  
2 attached RI/FS Work Plan Outline. EPA reserves the right to  
3 undertake any remedial investigation or feasibility study work in  
4 the event that the Respondent declines to perform such work or  
5 fails to perform such work in accordance with EPA requirements.  
6 In addition, EPA reserves the right to undertake response actions  
7 at any time. EPA also reserves the right to seek reimbursement  
8 from the Respondent for any response costs incurred by the United  
9 States.

10  
11 XVII. REIMBURSEMENT OF RESPONSE AND OVERSIGHT COSTS

12 A. Respondent shall reimburse the Hazardous Substance  
13 Superfund for all EPA response and oversight costs incurred by  
14 the U.S. Government with respect to this Consent Order. At the  
15 end of each year, EPA shall submit to the Respondent a detailed  
16 accounting of all such response and oversight costs. The  
17 Respondent shall, within 60 calendar days of receipt of that  
18 accounting, remit a check for the total amount of those costs,  
19 made payable to the Hazardous Substance Superfund. Checks  
20 should specifically reference the Southern Pacific Roseville  
21 site and be addressed to:

22 U.S. Environmental Protection Agency  
23 Superfund Accounting  
24 P.O. Box 371003M  
Pittsburgh, PA 15251  
Attention: Collection Officer for Superfund

25 Respondent shall send a copy of the transmittal letter and a  
26 copy of the check to the EPA Project Coordinator.

27 B. After reviewing EPA's accounting, Respondent may  
28 submit a written request to EPA for additional clarification or

1 explanation of any response or oversight costs included in the  
2 accounting. EPA shall provide a written response to Respondent's  
3 request. Unless EPA and Respondent mutually agree otherwise,  
4 such a request and response shall not affect the schedule for  
5 payment of response and oversight costs.

6 C. EPA reserves the right to bring an action against the  
7 Respondent pursuant to Section 107 of CERCLA for recovery of  
8 all response costs, including oversight costs, incurred by the  
9 United States related to this Consent Order which are not  
10 reimbursed by the Respondent, as well as any other unreimbursed  
11 future costs incurred by the United States in connection with  
12 response and oversight activities conducted pursuant to CERCLA  
13 at or relating to the Site.

14  
15 XVIII. REIMBURSEMENT OF PAST COSTS

16 A. Respondent agrees to reimburse the Hazardous Substance  
17 Superfund for all response and oversight costs which have been  
18 incurred by EPA with respect to the Site prior to the effective  
19 date of this Consent Order. EPA agrees to provide to Respondent  
20 a detailed accounting of all such costs within 120 days of the  
21 effective date of this Consent Order. Respondent shall, within  
22 60 calendar days of receipt of EPA's accounting, remit a check  
23 payable to the Hazardous Substance Superfund for the amount of  
24 those costs to the address listed in Section XVII, supra.  
25 Respondent shall send a copy of the transmittal letter and a copy  
26 of the check to the EPA Project Coordinator.

27 B. EPA reserves the right to bring an action against the  
28 Respondent pursuant to Section 107 of CERCLA for recovery of all



1 unreimbursed past response costs, including oversight costs,  
2 incurred by the United States in connection with response and  
3 oversight activities conducted pursuant to CERCLA at or relating  
4 to the Site.

5  
6 XIX. OTHER CLAIMS

7 A. Nothing in this Consent Order shall constitute or be  
8 construed as a release from any claim, cause of action or demand  
9 in law or equity against any person, firm, partnership, or  
10 corporation not a signatory to this Consent Order for any  
11 liability it may have arising out of or relating in any way to  
12 the generation, storage, treatment, handling, transportation,  
13 release, or disposal of any hazardous substances, hazardous  
14 wastes, pollutants, or contaminants found at, taken to, or taken  
15 from the Site.

16 B. This Consent Order does not constitute a preauthoriza-  
17 tion of funds under Section 111(a)(2) of CERCLA, 42 U.S.C.  
18 § 9611(a)(2).  
19

20 XX. OTHER APPLICABLE LAWS

21 All actions required to be taken pursuant to this Consent  
22 Order shall be undertaken in accordance with the requirements  
23 of all applicable federal, state, and local laws, regulations,  
24 and permitting requirements.  
25

26 XXI. INDEMNIFICATION OF THE UNITED STATES GOVERNMENT

27 The Respondent agrees to indemnify and save and hold harm-  
28 less the United States Government, its agencies, departments,

1 agents, contractors, and employees, from any and all claims or  
2 causes of action arising from or on account of acts or omissions  
3 of the Respondent, its officers, employees, receivers, trustees,  
4 agents, or assigns, in carrying out the activities pursuant to  
5 this Consent Order. EPA is not a party to any contract involving  
6 the Respondent at the Site.

7  
8 XXII. PUBLIC COMMENT

9 A. Upon approval by EPA of the Feasibility Study report,  
10 EPA shall make the FS report, as well as other supporting  
11 documents, available to the public for review and comment for  
12 a minimum thirty (30) day period, pursuant to EPA's Community  
13 Relations Policy and the requirements of Section 117 of CERCLA,  
14 as amended, 42 U.S.C. § 9617. Following its review of any  
15 public comments submitted, EPA may make changes to the Feasi-  
16 bility Study report. If Respondent does not agree to incor-  
17 porate those changes, EPA reserves the right to withdraw its  
18 consent and take any action it deems proper, including conduct-  
19 ing the work itself. Following the public review and comment  
20 period for the Feasibility Study report, EPA shall publish a  
21 Record of Decision specifying which remedial action alternative  
22 is approved for the Site.

23 B. In addition, EPA shall make all deliverables required  
24 by this Consent Order available to the public for review and  
25 comment, through the administrative record and the established  
26 community relations process.

27 C. EPA will serve as the lead agency for the community  
28 relations process and for compiling the administrative record.

1                    XXIII. EFFECTIVE DATE AND SUBSEQUENT MODIFICATION

2            A. In consideration of the communications between South-  
3    ern Pacific and EPA prior to the issuance of this Consent Order  
4    concerning its terms, the Respondent agrees that there is no  
5    need for a settlement conference prior to the effective date of  
6    this Consent Order. Therefore, the effective date of this  
7    Consent Order shall be the date on which it is signed by  
8    Respondent.

9            B. Any amendments to this Consent Order shall be in  
10   writing and shall have as the effective date, that date on  
11   which such amendments are signed by EPA.

12           C. Any reports, plans, specifications, schedules, and  
13   attachments required by this Consent Order shall, upon approval  
14   by EPA, be incorporated into this Consent Order. Any noncompli-  
15   ance with such EPA approved reports, plans, specifications,  
16   schedules, and attachments shall be considered a failure to  
17   achieve the requirements of this Consent Order and will subject  
18   the Respondent to the provisions included in Section XIV  
19   (Stipulated Penalties) of this Consent Order.

20           D. No informal advice, guidance, suggestions, or comments  
21   by EPA regarding reports, plans, specifications, schedules, or  
22   any other writing submitted by the Respondent shall be con-  
23   strued as relieving the Respondent of its obligation to obtain  
24   such formal EPA approval as may be required by this Consent  
25   Order.

26  
27                    XXIV. PARTIES BOUND

28            A. This Consent Order shall apply to and be binding upon

1 EPA and Southern Pacific, their agents, successors, and assigns.

2 B. Any change in ownership or corporate or partnership  
3 status relating to the Site shall in no way alter the Respon-  
4 dent's responsibilities under this Consent Order. The Respon-  
5 dent shall be responsible, and shall remain responsible, for  
6 carrying out all activities required of the Respondent under  
7 this Consent Order.

8 C. The Respondent and EPA shall each provide copies  
9 of this Consent Order to their respective contractors,  
10 subcontractors, laboratories, and consultants retained to  
11 conduct any portion of the work performed pursuant to this  
12 Consent Order. The copy shall be provided within fourteen  
13 (14) calendar days of the effective date of this Consent Order  
14 or of the date of such retention, whichever is later.

15

16 XXV. NOTICE TO THE STATE

17 EPA has notified the State of California pursuant to the  
18 requirements of Section 106(a) of CERCLA, 42 U.S.C. § 9606(a).

19

20 XXVI. TERMINATION AND SATISFACTION

21 The provisions of this Consent Order shall be deemed  
22 satisfied upon the Respondent's receipt of written notice from  
23 EPA that the Respondent has demonstrated, to the satisfaction  
24 of EPA, that all of the terms of this Consent Order, including  
25 any additional or modified tasks which EPA has determined to be  
26 necessary pursuant to Section VI.K of this Consent Order, have  
27 been completed. Respondent may request that EPA make a deter-  
28 mination as to whether or not the requirements of this Consent

1 Order have been completed. EPA shall make such a determination  
2 and inform Respondent in writing within forty-five (45) days of  
3 such request.  
4

5 XXVII. REPRESENTATIVE AUTHORITY

6 Each undersigned representative of the parties to this  
7 Consent Order certifies that he or she is fully authorized to  
8 enter into the terms and conditions of this Consent Order and to  
9 execute and to legally bind such party to this document.  
10

11 IT IS SO AGREED AND ORDERED:  
12

13 Southern Pacific Transportation Company

14 By *D.M. Mohan*  
15 D.M. Mohan  
16 Title: Executive Vice President

12/21/87  
Date

17 U.S. Environmental Protection Agency

18 By *Jeffrey Zelickson*  
19 Jeffrey Zelickson  
20 Title: Director, Toxics & Waste Mgmt. Div.  
21 Director, Toxics and Waste Management  
22 Division  
23  
24  
25  
26  
27  
28

12-18-87  
Date